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April 18, 1996

BY OVERNIGHT MAIL

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-61

Dear Mr. Caton:

Enclosed for filing please find an original plus eleven (11) copies, two of which have been marked "Extra Public Copy," of the Comments of Frontier Corporation on Market Definition, Structural Separation Requirements and Rate Averaging Issues.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Ms. Janice Myles (cover letter and Diskette)

International Transcription Service

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as Amended	)	

COMMENTS OF FRONTIER CORPORATION ON MARKET DEFINITION, STRUCTURAL SEPARATION REQUIREMENTS AND RATE AVERAGING ISSUES

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Summary

Frontier[1] submits these comments regarding the issues set forth in sections IV, V and VI of the Commission's Notice initiating this proceeding.

With respect to the issues upon which the Commission requests comment here, the Commission should take three steps. *First*, the Commission should adopt a state-by-state geographic market analysis to take into account the potential for Bell company entry into the in-state, interexchange market.

Second, the Commission should abandon its structural separation requirements for the provision of interexchange services by exchange carriers serving less than two percent of the Nation's access lines. The Act creates a sharp distinction between large and small exchange carriers, with the latter presumptively subject to less regulation. Such action, moreover, would be consistent with past Commission action that has consistently distinguished the Nation's largest exchange carriers from their smaller counterparts.

Third, the Commission should clarify that its proposed rate averaging and rate integration policies apply only to the basic interexchange services, historically recognized as message telephone service and wide area telephone service. This clarification would codify current industry practice, is consistent with the Act and is economically rational.

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[1] Abbreviations used herein are defined in the text.

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COMMENTS OF FRONTIER CORPORATION ON MARKET DEFINITION, STRUCTURAL SEPARATION REQUIREMENTS AND RATE AVERAGING ISSUES

Introduction

Frontier Corporation ("Frontier"), on behalf of its local telephone and long distance subsidiaries, submits these comments regarding the issues set forth in sections IV, V and VI of the Commission's Notice initiating this proceeding.[1] The Notice represents the Commission's first effort to implement the regulatory reform provisions of the Telecommunications Act of 1996 ("Act"). The Act provides that, before the Commission may forebear from regulation, it must find, based upon substantial record evidence, that continued enforcement is not necessary: (a) to ensure that charges terms and conditions remain just, reasonable and nondiscriminatory; (b) to protect consumers; and (c) because forbearance serves the public interest.[2]

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1 *Policies and Rules Concerning the Interstate, Interexchange Marketplace*, CC Dkt. 96-61, Notice of Proposed Rulemaking, FCC 96-123 (March 25, 1996) ("Notice").

2 47 U.S.C. § 10(a) and (b).

To meet this statutory test with respect to the issues upon which the Commission requests comment here, the Commission should take three steps. *First*, the Commission should alter the geographic market analysis that it has used in the past from one nationwide interexchange market to a state-by-state analysis. While the use of a nationwide geographic market definition in the past was justified in the evaluation of overall AT&T nationwide market power, a geographic market definition aggregated to this level fails to take into account the potential for Bell company entry into the in-state, interexchange market.[3] The interest of the Act will not be served by "high level" market definitions. By adopting a more narrow geographic market definition in this proceeding, the Commission will frame the mode of analysis for considering Bell company entry into the in-state, interexchange business.[4]

Second, the Commission should abandon its structural separation requirements for the provision of interexchange services by exchange carriers serving less than two percent of the Nation's access lines. The Act creates a sharp distinction between large and small exchange carriers, with the latter presumptively subject to less regulation. Such action,

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[3] 47 U.S.C. § 271-72.

[4] The Act conditions such entry upon compliance with a series of preconditions (sec 47 U.S.C. § 271(c)(1) and (2)). These preconditions do not constitute a mere formality -- indeed, full compliance is critical to effective competition in all telecommunications markets. Thus the Commission should signal its intent now that it will subject applications by any of the Bell companies to enter the in-state, interexchange business to heightened administrative scrutiny.

moreover, would be consistent with past Commission action that has consistently distinguished the Nation's largest exchange carriers from their smaller counterparts.[5]

Third, the Commission should clarify that its proposed rate averaging and rate integration policies apply only to the basic interexchange services. This clarification would codify current industry practice, is consistent with the Act and is economically rational.

Argument

I. THE COMMISSION SHOULD ALTER ITS GEOGRAPHIC MARKET DEFINITION TO ACCOUNT FOR POTENTIAL BELL COMPANY ENTRY INTO THE IN-STATE INTEREXCHANGE BUSINESS.

Traditionally, the Commission has analyzed the domestic interexchange business, for antitrust and competition policy purposes, as a single national market.[6] Pre-divestiture, this analytical approach made sense, as it did in the environment governed by the AT&T Consent Decree.[7] Under the Decree, the Bell companies were barred from the interexchange business, except in a few, relatively insignificant respects. Under both regimes, AT&T was the dominant nationwide provider of interexchange services and the assumption of a national geographic product market made sense for purposes of antitrust

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5 *See Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, 8 FCC Rcd 4545 (1993).

6 *E.g., Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Dkt. 79-252, Fourth Report and Order, 95 FCC 2d 554, 563 (1983), *vacated in part on other grounds sub nom., AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. Denied, MCI v. AT&T*, 113 S. Ct. 1191 (1993).

7 *U.S. v. Western Electric*, 552 F. Supp. 131 (D.D.C. 1982); affirmed *sub nom, Maryland, v. U.S.*, 460 U.S. 1001 (1983).

and competition analysis. The objective was to evaluate the incumbent national carrier's national market power. In contrast, the Bell companies are dominant providers of access, local and intraLATA services in territories that are geographically discrete.

The Act has fundamentally changed the regulatory landscape. Section 271 of the Communications Act permits a Bell company to enter the in-state, interexchange business upon an affirmative demonstration that it satisfies the Act's preconditions -- including compliance with a competitive checklist.[8]

The possibility of Bell company entry into this business on a state-by-state basis provides a compelling reason for the Commission to alter its traditional geographic market analysis, and instead to focus on a market definition that meets the intent of the Act, by focusing on areas the Act seeks to make competitive. Each Bell company serves the overwhelming majority of access lines in the territories ceded to it as a part of the reorganization of the former Bell System. As a result, each inherited a substantial customer base -- comprising nearly all of the access lines in the area it was allocated — and significant in-region interexchange networks, ostensibly designed to handle "official traffic."[9] These embedded advantages permit the Bell companies to significantly impede in-region, interexchange competition. The Bell companies' control of the overwhelming majority of the strategic access facilities in their regions through which their competitor's

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[8] 47 U.S.C. § 271(c)(2)(B)(i-xiv)

[9] *U.S. v. Western Electric*, 569 F. Supp. 1057, 1097-1101 (D.D.C. 1983); *aff'd mem.*, 464 U.S. 1063 (1983).

local and long distance traffic must transit to serve their own end-user customers provides both the incentive and the ability for the Bell companies to engage in anticompetitive behavior.[10]

The Act establishes a procedure for the Commission to evaluate Bell company petitions to enter the in-state, interexchange business. That procedure requires a state-by-state analysis. The Act does not reserve this process to the States or anticipate that the Commission will simply defer. Moreover, barriers to entry that may change as a result of actions taken in response to the passage of the Act inevitably will vary state by state. The very structure of the Act's provisions governing Bell company entry into the in-state, interexchange business virtually mandates that the Commission modify the geographic market definition component of its competition analysis.

Moreover, even if the Bell companies were to embrace fully the Act's goal of opening the local exchange to competition, it will take years for significant local exchange competition actually to develop. That development will almost certainly vary state-by-state. In addition, it is evident that all of the Bell companies will not embrace the Act's procompetitive policies. The incentives have led to self-interested action adversely affecting competitions. US West, for example, has signaled its reaction to the prospect of real competition by seeking to withdraw the availability of interstate special access services for use in conjunction with resold Centrex service. The Common Carrier Bureau correctly

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[10] *See* Notice, ¶ 53.

rebuffed this anticompetitive ploy.[11] US West then attempted, on the eve of -- and , in some cases, retroactively after -- the passage of the Act to grandfather its Centrex services at the intrastate level and cease future resale. Its attempt has met, to date, with virtually no success.[12] This series of tactics demonstrates that at least some of the Bell companies are not terribly enthusiastic about the advent of local exchange competition.

Thus, the Commission should enunciate the market definitions under which it will evaluate Bell company petitions to enter the in-state, interexchange business.[13]

II. THE COMMISSION SHOULD RELAX ITS STRUCTURAL SEPARATION REQUIREMENTS GOVERNING INTEREXCHANGE SERVICES PROVIDED BY SMALLER EXCHANGE CARRIERS AND AFFILIATES.

The Commission currently regulates as non-dominant interexchange services provided by non-Bell exchange carriers if they comply with certain structural separation requirements.[14] Otherwise, the Commission regulates smaller exchange carriers as

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11 *In Re: US West Tariff FCC Nos. 3 and 5*, 10 FCC Rcd 13708 (1995), application for review pending.

12 At the state level, its actions have been recognized as transparently anticompetitive in Minnesota and Oregon, and to date the initiatives have been rejected or suspended in most states.

13 The Commission also requests comment on whether it should alter its traditional product market analysis. Notice, ¶¶ 44-47. There is no reason for the Commission to do so. As the Commission itself tentatively concludes (*id.*, ¶ 47), unless there is credible evidence that a narrower product market definition is necessary, the effort to analyze competitive effects in more narrowly defined product markets is not worth the effort. If the Commission finds such evidence, it may, as it has done in the past, carve out such narrower product markets. *See e.g., Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, FCC 95-423, Order, ¶¶ 102-105 (Oct. 23, 1995) recon. pending.

14 *Policy and Rules Concerning Rates for Competitive Common Carrier Services*, Fifth Report and Order, 98 FCC 2d 1191, 1198-99 (1984).

dominant with respect to their provision of interexchange services. The Commission should abandon the distinction, and eliminate the requirements where the exchange carrier provides fewer than two percent (2%) of the nation's local switched lines.

The Act draws a new line between larger and smaller exchange carriers. The latter -- which the Act defines as those exchange carriers serving less than two percent of the Nation's access lines[15] -- are subject to less stringent regulatory oversight than their larger counterparts. Such carriers may, for example, petition the affected state regulatory authorities for relief from full compliance with the unbundling, resale and interconnection requirements of section 251 of the Communications Act.[16] The Commission should recognize the distinction in this context as well. Congress has rationally concluded that the costs of substantial regulation of smaller exchange carriers outweigh the benefits that might accrue from such regulation.[17] Moreover, the separation requirements that will govern the Bell companies' provision of in-state, interexchange services are subject to a sunset provision.[18] It makes little sense to subject smaller exchange carriers -- that lack the critical mass and geographic ubiquity of the Bell companies -- to separation requirements that ultimately will not even apply to the Bell companies.

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15 47 U.S.C. § 251(f)(2).

16 47 U.S.C. § 251(f)(2). Greater reductions in regulatory requirements are anticipated for "rural telephone companies."

17 *See* Conference Report to Accompany S.652 ("Conference Report"), Telecommunications Act of 1996, Congressional Record, January 31, 1996 at H1109-10.

18 47 U.S.C. § 272(f)(1).

This approach is fully consistent with the Commission's past practice. The Commission has routinely recognized distinctions between larger and smaller exchange carriers. It applied its *Computer II* structural separation requirements only to the Bell companies.[19] It made price cap regulation optional for exchange carriers other than the Bell companies and GTE.[20] It has also declined to impose several reporting requirements on exchange carriers other than the Bell companies and GTE.[21]

The Commission should implement a less intrusive regulatory approach to the provision of interexchange services by the Nation's smaller exchange carriers than exists today.

III. THE COMMISSION SHOULD CODIFY CURRENT PRACTICES REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION.

The Telecom Act requires that rates for interstate, interexchange services in non-urban areas be no higher than rates in urban areas[22] and that rates charged for such services in one State be no higher than rates charged in any other State.[23] The

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19 *Amendment of Section 64.702*, 77 FCC 2d 384 (1986); recon. 84 FCC 2d 50 (1980); affirmed, *CCIA v. FCC*, 693 F. 2d 198 (D.C.Cir. 1982), cert. denied, 461 U.S. 938 (1983).

20 *Policy and Rules Regarding Rates for Dominant Carriers*, CC Dkt. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), *aff'd sub nom, NRTA v. FCC*, 988 F.2d 174 (D.C.Cir. 1993).

21 *E.g., Transport Rate Structure and Pricing*, CC Dkt. 91-213, Report and Order, 7 FCC Rcd 7006 (1992); recon 8 FCC Rcd 5370, 5381 (1993).

22 47 U.S.C. § 254(g).

23 47 U.S.C. § 254(g).

Conference Report makes clear that these provisions of the Act express Congress' intent to codify current Commission policy and industry practice.[24] As the Commission at least implicitly acknowledges,[25] its rate averaging and rate integration policies apply only to the basic interexchange services. While the industry has used the terms "MTS" and "WATS," such terms are less descriptive today than they were in the past. The Commission should use current service descriptions for the basic services that were contemplated by the Act. Current policies, for example, do not prohibit targeted discounts, optional calling plans or customized service offerings.[26]

Nor is there any reason for the Commission to proscribe such special pricing packages and practices. High-volume customers or areas generate traffic volumes that justify discounts from basic charges. In addition, current policies permit interexchange carriers to recognize -- through targeted discounts and the like -- that the level of access charges in different parts of the country vary widely. Finally, so long as basic interexchange rates remain geographically averaged and integrated, all citizens -- regardless of location -- will continue to enjoy the benefits of reasonably-priced interexchange services.[27]

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24 Conference Report at H1112.

25 Notice, ¶ 72-73.

26 *Id.*, ¶ 72.

27 Frontier agrees with the Commission's conclusion that it should enforce the Act's rate averaging and rate integration requirements through a certification process. Notice, ¶ 78. Thus, the Commission should require all interexchange carriers to certify annually that their basic interexchange rates comply with the rate averaging and rate integration principles of the Act.

Conclusion

For the foregoing reasons, the Commission should act upon the proposals contained in sections IV, V and VI of the Notice in the manner suggested herein.

Respectfully submitted,

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